

ESTTA Tracking number: **ESTTA729052**

Filing date: **02/24/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Exxon Mobil Corporation
Granted to Date of previous extension	02/24/2016
Address	5959 Las Colinas Boulevard Irving, TX 75039 UNITED STATES
Attorney information	Tyson D. Smith Pirkey Barber PLLC 600 Congress Ave., Suite 2120 Austin, TX 78701 UNITED STATES tsmith@pirkeybarber.com, smeleen@pirkeybarber.com, eolson@pirkeybarber.com, tmcentral@pirkeybarber.com

Applicant Information

Application No	86652437	Publication date	10/27/2015
Opposition Filing Date	02/24/2016	Opposition Period Ends	02/24/2016
Applicant	SHENZHEN YINGLIANCHUANG optoelectronic device Co., Ltd. 1F,2#,ALLEYWAY 6 SHENZHEN, CHINA		


Goods/Services Affected by Opposition

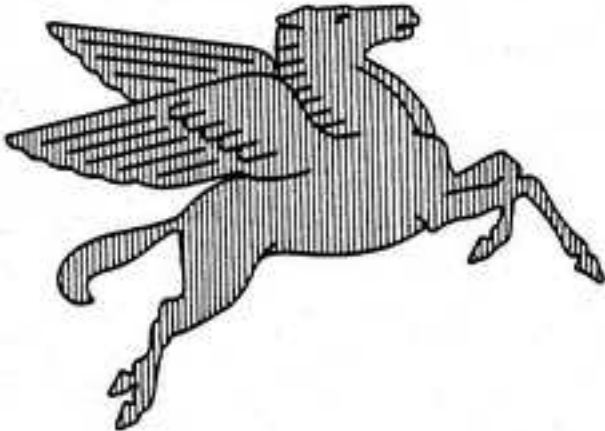
Class 011. First Use: 2013/12/24 First Use In Commerce: 2013/12/24 All goods and services in the class are opposed, namely: Aquarium lights; Arc lamps; Electric holiday lights; Filters for drinking water; Flashing strobe light apparatus; Fluorescent lamp tubes; Germicidal lamps for purifying air; Headlights for automobile; Humidifiers; Incandescent lamps; Lamp casings; Lamps; LED (light emitting diode) lighting fixtures; LED light bulbs; Light bulbs; Light diffusers; Lighting apparatus, namely, lighting installations; Luminous house numbers; Mixer faucets for water pipes; Swimming pool chlorinating apparatus; Tap water faucets; Taps; Theatrical stage lighting apparatus; Ultraviolet ray lamps, not for medical purposes; Vehicle reflectors; Vehicle turn-signal light bulbs; Water faucet spout; Water filtering apparatus; Water purifying apparatus
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution by blurring	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	287746	Application Date	02/21/1931
Registration Date	10/06/1931	Foreign Priority Date	NONE
Word Mark	PEGASUS		
Design Mark	<p style="text-align: center;">PEGASUS</p> 		
Description of Mark	NONE		
Goods/Services	Class 004. First use: First Use: 1911/04/12 First Use In Commerce: 1911/04/12 LUBRICATING OILS		

U.S. Registration No.	1461344	Application Date	02/24/1987
Registration Date	10/13/1987	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 037. First use: First Use: 1966/00/00 First Use In Commerce: 1966/00/00 AUTOMOTIVE SERVICE STATION SERVICES

U.S. Registration No.	1461345	Application Date	02/24/1987
Registration Date	10/13/1987	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 037. First use: First Use: 1966/00/00 First Use In Commerce: 1966/00/00 AUTOMOTIVE SERVICE STATION SERVICES
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U.S. Registration No.	3713363	Application Date	03/06/2009
Registration Date	11/17/2009	Foreign Priority Date	NONE

Word Mark	NONE
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Design Mark	
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Description of	The mark consists of a flying horse.
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Mark	
Goods/Services	Class 004. First use: First Use: 2001/10/00 First Use In Commerce: 2001/10/00 Motor fuels, namely, gasoline and diesel fuels

Attachments	71311346#TMSN.png(bytes) 73646301#TMSN.png(bytes) 73646304#TMSN.png(bytes) 77685117#TMSN.png(bytes) EXM045 - Notice of Opposition - TOMDA and Pegasus design - final doc.pdf(41210 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/TDS/
Name	Tyson D. Smith
Date	02/24/2016

2. For many decades, Opposer, its affiliated companies, and its independent dealers and distributors have used the PEGASUS Device shown directly below in connection with retail gasoline service stations, motor fuels, motor oils, industrial oils and greases, and related goods and services.



3. The PEGASUS Device has been used in the United States on “lubricating oils” at least as early as April 12, 1911.

4. The PEGASUS Device is inherently distinctive, serving to identify and indicate the source of Opposer’s goods and services to the consuming public, and to distinguish its goods and services from those of others.

5. Additionally, as a result of Opposer’s extensive usage and promotion of the PEGASUS Device, the PEGASUS Device has become distinctive to designate Opposer, and is well-known and widely recognized by consumers. Opposer has developed great and valuable goodwill in the PEGASUS Device. Consumers know and respect the PEGASUS Device as a symbol of Opposer’s commitment to quality, value, and convenience.

6. The PEGASUS Device has been long and prominently used at Opposer’s MOBIL branded gasoline retail service stations. There are thousands of MOBIL branded service stations in the United States, with billions of dollars in sales per year. Opposer’s MOBIL stations are among the most widespread and recognizable gasoline stations in the United States.

7. Over the years, ExxonMobil has invested significant effort and resources promoting its MOBIL stations in the United States, and spent many millions of dollars advertising them.

8. ExxonMobil has invested many millions of dollars over many decades in advertising and promoting its PEGASUS Device and the goods and services sold under that

mark, with the result that the purchasing public in the United States has come to know, rely upon, and recognize the goods and services of ExxonMobil by the PEGASUS Device. ExxonMobil has established valuable goodwill in its PEGASUS Device.

9. The PEGASUS Device is famous.

10. In addition to its extensive common-law rights, Opposer owns United States trademark registrations for its PEGASUS Device, including U.S. Reg. Nos. 287,746; 1,461,344; 1,461,345; and 3,713,363. Each of these registrations is valid, subsisting, and incontestable pursuant to 15 U.S. § 1065.

11. Applicant SHENZHEN YINGLIANCHUANG optoelectronic device Co., Ltd. (“Applicant”) is a China limited liability company with an address of 1F, 2#, Alleyway 6, Heben Garden, Shiyan Street, Bao an Dist., Shenzhen, China.

12. Applicant filed Application Serial No. 86/652,437 for the mark TOMDA & Design, shown below (the “TOMDA & Pegasus Design Logo”), for “Aquarium lights; Arc lamps; Electric holiday lights; Filters for drinking water; Flashing strobe light apparatus; Fluorescent lamp tubes; Germicidal lamps for purifying air; Headlights for automobile; Humidifiers; Incandescent lamps; Lamp casings; Lamps; LED (light emitting diode) lighting fixtures; LED light bulbs; Light bulbs; Light diffusers; Lighting apparatus, namely, lighting installations; Luminous house numbers; Mixer faucets for water pipes; Swimming pool chlorinating apparatus; Tap water faucets; Taps; Theatrical stage lighting apparatus; Ultraviolet ray lamps, not for medical purposes; Vehicle reflectors; Vehicle turn-signal light bulbs; Water faucet spout; Water filtering apparatus; Water purifying apparatus,” in International Class 11 (the “Application”). In the Application, Applicant alleges first use of the TOMDA & Pegasus Design Logo on December 24, 2013.



13. The Application was filed on June 4, 2015, and was published for opposition on October 27, 2015. Opposer has been granted an extension of time to oppose the Application through February 24, 2016.

14. Opposer's PEGASUS Device became famous prior to any use by Applicant of its TOMDA & Pegasus Design Logo.

15. Opposer has priority based on its prior use and registration of its PEGASUS Device in the United States. Opposer used and registered its PEGASUS Device, and that mark became famous, long before any claimed use by Applicant of the TOMDA & Pegasus Design Logo or the filing date of the Application.

16. The TOMDA & Pegasus Design Logo is confusingly similar to Opposer's PEGASUS Device. The TOMDA & Pegasus Design Logo is similar in sight, sound, and commercial impression to Opposer's PEGASUS Device, and the goods sold under Applicant's TOMDA & Pegasus Design Logo are similar or related to the products and services that Opposer offers under its PEGASUS Device. In addition, Opposer's PEGASUS Device is of sufficient fame and reputation among consumers that when Applicant's TOMDA & Pegasus Design Logo is used for the goods identified in the Application, a connection with Opposer would be presumed.

17. Opposer has not given Applicant permission or approval to use or register the TOMDA & Pegasus Design Logo.

18. The TOMDA & Pegasus Design Logo so resembles Opposer's PEGASUS Device as to be likely, when used on or in connection with the identified goods of Applicant, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products Applicant offers under the TOMDA & Pegasus Design Logo are produced, sponsored, endorsed, or approved by Opposer, or are in some way affiliated, connected, or associated with Opposer or its goods and services. Registration therefore should be refused under 15 U.S.C. § 1052(d).

19. The TOMDA & Pegasus Design Logo is likely to cause dilution by blurring of Opposer's famous PEGASUS Device in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). Thus, registration should also be refused under 15 U.S.C. § 1125(c).

20. Registration of the TOMDA & Pegasus Design Logo on the Principal Register is inconsistent with Opposer's rights under its aforementioned registrations and common law and is damaging to Opposer.

WHEREFORE, Opposer is or will be damaged by Application Serial No. 86/652,437, and prays that the Application be rejected and registration of the mark therein be refused.

This Notice of Opposition is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(17). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber PLLC, Account No. 50-3924/EXMO045/SPM, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,

Date: February 24, 2016

/Tyson D. Smith/

Stephen P. Meleen

Tyson D. Smith

PIRKEY BARBER PLLC

600 Congress Avenue, Suite 2120

Austin, Texas 78701

(512) 322-5200

ATTORNEYS FOR OPPOSER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing NOTICE OF OPPOSITION was served via First Class Mail, postage prepaid, on February 24, 2016, on the following:

SHENZHEN YINGLIANCHUANG optoelectronic device Co., Ltd.
1F,2#, ALLEYWAY 6
HEBIN GARDEN, SHIYAN STREET, BAO AN DIST.
SHENZHEN, CHINA

Zhuo Xu
3057 Nutley Street, Suite 818
Fairfax, VA 22031

/Tyson D. Smith/